

New Chapter 13 Discharge Requirements

11 U.S.C. § 1328

The Act imposes new requirements for discharge in chapter 13 cases, relating to domestic support obligations, prior discharges, and potential felony charges.

I. DISCHARGE ISSUES

- A. 11 U.S.C. § 1328(a)** If debtor owes domestic support obligations, debtor must certify that all payments due have been paid before court can grant discharge.¹
1. Confirmation order could state that certification, if necessary, must be filed prior to discharge.
 2. Responsibility for tracking this item should be with trustee and debtor's attorney.
- B. 11 U.S.C. § 1328(f)(1) and (2)** Discharge will be denied to debtor who has received a discharge in a chapter 7, 11, or 12 within the last 4 years or a discharge in chapter 13 in the last 2 years.
1. Clerk's office should check for prior discharges within required time limits
 - a. Local decision:
 - i. Courts may want to consider whether to check for prior discharges after case is filed or at some other point before discharge, such as near the § 341 meeting.
 - ii. Courts could have the docket sheet indicate that the debtor is not eligible for discharge.
 - iii. Courts can use the daily Party Index report to check for prior discharges.
 2. Clerk's office may want to consider amending the confirmation plan or order to state that debtor cannot get discharge if debtor meets the requirements of 11 U.S.C. § 1328 (f)(1) or (2).
- C. 11 U.S.C. § 1328(h)** If debtor has elected to exempt property that exceeds \$125,000 in the aggregate AND the debtor may be found guilty of a felony, or become liable for specified debts, the discharge should be delayed until after notice and hearing.

¹ The debtor is also required to pay all amounts that are required to be paid under a domestic support obligation due after the filing of a petition in order for the plan to be confirmed. 11 U.S.C. §1325(a)(8).

1. It is the responsibility of the trustee or party in interest to make a motion to delay discharge because of reasonable belief that debtor has pending proceeding or may become liable for certain debts.
2. If such motion made, clerk's office would notice a hearing on the motion.
3. Section 1328(h) is effective for cases filed on or after October 17, 2005.

Note - 11 U.S.C. § 1324(b): Confirmation hearings may be held not earlier than 20 days and not later than 45 days after the date of the §341 meeting, unless court determines it is in the best interests of creditors to hold hearing earlier. Court will need to change the § 341 notice to select dates within these time periods.